**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**APPEAL FROM ORDER No. 318 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE K.M.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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**STATE OF GUJARAT & 3 - Appellant(s)**
**Versus**
**MAHENDRA RATILAL RAVAL - Defendant(s)**

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**Appearance :**
GOVERNMENT PLEADER for Appellant(s) : 1 - 4.
MR KISHOR M PAUL for Defendant(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**

**Date : 23/03/2006**

**ORAL JUDGMENT**

1.The State of Gujarat, through the A.G.P., Morbi, Rajkot District filed this Appeal From Order against the order dated 5/6/2003 passed by the learned Civil Judge

(S.D.), Morbi below Exh.5 application in Special Civil Suit No.79 of 2003.

1.1 Heard Ms.P.B.Sheth, learned AGP in this behalf.

1.2 The brief facts of the matter are as under:

1.3 Respondent Mahendrakumar Ratilal Raval had filed Special Civil Suit No.79 of 2003 before the learned Civil Judge (S.D.), Morbi on 4/2/2003. In the said suit it was stated that the plaintiff has property situated at Sanala Road, Morbi in the scheme 215 MIG of Gujarat Housing Board being block no.M-637. The said block is 71.65 sq. mtr. Plaintiff is citizen of this country and owner of the said property.

1.4 It is the case of the plaintiff in the plaint that on 26/1/2001 a devastating earthquake measuring 6.9. Richter Scale had taken place in entire State of Gujarat, particularly in the area of Morbi. In view of this earthquake, all Gujarat has suffered. As far as the property of the plaintiff, it has also suffered a large damage. The plaintiff has filed application that his property may be put in G-5 category. The plaintiff

can claim maximum Rs.1,40,000 as damage in G-4 category in which Morbi is put as per the Government Regulation.

1.5 It is the case of the plaintiff that as per computer file no.14/25/87, the area of the house is admeasuring 420 sq. ft. Due to the earthquake, because of the damage, the plaintiff is not able to stay in the said house in this behalf. According to the plaintiff, he is entitled to get minimum damage of Rs.1,12,000/-.

1.6 It is the case of the plaintiff that the respondent authority has fixed the damage of Rs.2,800/- per sq. ft. and if that criteria is admitted, the plaintiff will be entitled to get Rs.1,40,000/- as damages.

1.7 It is the case of the plaintiff that for his neighbours who had faced damage as he had, for them the authority has fixed the damage of Rs.1,10,000/- to 1,25,000/-. Because of the said, the plaintiff has filed application for re-survey and according to re-survey, as per the recommendation of Engineer, the plaintiff is entitled to get Rs.1,09,292/- as damages.

1.8 As the defendant failed and neglected to pay any

amount, the plaintiff filed suit. Along with the suit, the plaintiff has produced necessary documents. The authority did not file the reply. The plaintiff has produced assessment produced at Mark 3/1 dated 30/1/2002 wherein the Government has sanctioned amount of Rs.1,09,292/- in connection with damages of the amount of earthquake. Inspite of the same, the plaintiff has been given Rs.10,000/- only.

2. In view of the same, the learned Trial Judge has passed the following order on 1/9/2004:

> "The Mamlatdar, Morbi is hereby ordered and directed that they should implement and act upon the certificate issued by them in favour of the plaintiff dated 30/1/2002 in the computer file no.14/25/87 and to start process of payment to the plaintiff immediately. The amount of installment should be paid by the Mamlatdar to the plaintiff within the period of sixty days from the date of receipt of this order to the plaintiff."

3. Mr.Paul, learned advocate has stated that when the aforesaid order was passed, the defendant did not file

written statement or any reply.

4. Heard Ms.P.B.Sheth, learned AGP in this behalf. In this case, the fact of the plaintiff that he had a house is not in dispute. The question of earthquake is also not in dispute. The Government has also assessed the damages and as per the said assessment, the plaintiff is entitled to get Rs.1,09,292/- as a damages.

5. When the Appeal From Order is admitted on 1/9/2004, this Court in Civil Application No.6918 of 2004, stayed the order of the Trial Court and after hearing of the parties, Rule was made absolute in the said Civil Application.

6. I have gone through the order passed by the learned Trial Judge in this behalf. I have gone through the averments made by the plaintiff. It may be noted that defendant has not filed any reply in this behalf. The learned Trial Judge has simply relied upon the certificate issued by the Mamlatdar, Morbi. The respondents have not been able to prove as to whether the certificate issued by the Mamlatdar, Morbi in

computer file no.14/25/87 is legal or illegal in this behalf.

7.The learned AGP has still not informed as to whether the Collector has taken action or not.

8.In view of the same, there is no substance in the Appeal From Order filed by the State of Gujarat. The learned AGP has tried to defend the appeal and stated that Appeal From Order is required to be allowed. On the other hand, Mr.Paul, learned advocate has stated that in this case, when the basic facts are admitted and the defendant has not been able to file reply before the Trial Court, the learned Judge has ordered that the plaintiff is entitled to all the benefits of damage because of earthquake. Earthquake had taken place in January 2001. Order was passed in June 2003. We are almost in March 2006.

9.In view of the fact that there is no dispute that the plaintiff is owner of the house. There is no dispute about earthquake took place. There is no dispute that Government has issued certificate by which the plaintiff is entitled to get Rs.1,09,292/-.

10.In view of the same, I do not see any reason to interfere with the matter in this behalf. I request the learned Trial Judge that this being a matter of the year 2003, hear and dispose of the said suit as expeditiously as possible preferably by 30/7/2006.

11.The respondents will give undertaking before the Trial Court that if in the main suit, he fails to obtain any damages, he will return the said damages.

12.In view of the same, Appeal From Order is disposed of.

(K.M.MEHTA, J.)

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